

STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

DEPARTMENT OF FISH AND GAME

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**LAKE AND STREAMBED ALTERATION AGREEMENT****Between****CALIFORNIA DEPARTMENT OF FISH AND GAME****and****CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISTRICT 8****regarding****ROUTINE MAINTENANCE ACTIVITIES IN IMPROVED AND UNIMPROVED CHANNELS****6-2003-Caltrans MA**

This Streambed Alteration Agreement (hereinafter "agreement") is entered into between the California Department of Fish and Game (hereinafter "the Department") and the California Department of Transportation, District 8 (hereinafter "Caltrans"), for the purpose of delineating and defining routine maintenance activities for State highway's in Riverside and San Bernardino Counties in improved and unimproved channels and shall not require further notice and agreement in compliance with Section 1601 of the Fish and Game Code, except as otherwise noted in this agreement.

WHEREAS, Section 1601 of the Fish and Game Code allows the Department to propose reasonable modifications to certain Caltrans projects as would allow for the protection and continuance of existing fish and wildlife resources that may be substantially adversely affected by that project; and

WHEREAS, with regard to any project that involves routine maintenance and operation of roads, bridges, drainage or flood control, notice to, and agreement with, the Department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources change, and the resources are adversely affected by the activity conducted under the agreement; and

WHEREAS, it is essential that Caltrans perform routine maintenance activities within improved and unimproved channels to maintain the capacity of the channel(s), to protect Caltrans' investment, to prevent loss of life and property; and

WHEREAS, consistent with the policies of California Fish and Game Code Section 1600 et seq., the protection and conservation of the fish and wildlife resources of California are of utmost public interest, and fish and wildlife conservation is a proper responsibility of the State; and

WHEREAS, in order to avoid future conflicts, it is mutually beneficial to delineate and

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define routine maintenance, to establish procedures to expedite maintenance activities, and to provide for the protection and continuance of existing fish or wildlife resources during such maintenance activities; and

WHEREAS, nothing in this agreement shall constitute a waiver of any future or current Department claims to the use and maintenance of natural conditions under the public trust doctrine; and

WHEREAS, nothing in this agreement shall constitute a waiver of Caltrans' claimed rights to maintain and operate the channel(s) solely for irrigation and/or flood control without a 1601 agreement; and

WHEREAS, this agreement is not intended to affect Caltrans' rights under Fish and Game Code Section 1601(f) to undertake emergency work necessary to protect life, property or service.

NOW THEREFORE, the Department and Caltrans agree as follows:

I. PURPOSE

The purpose of this agreement is to protect fish and wildlife resources pursuant to California Department of Fish and Game Code (Code) 1600 et seq. while allowing Caltrans, or their authorized contractor, to perform routine maintenance activities in channels within the right-of-way (ROW), or drainage easement, of a state route, U.S. route or interstate highway in order to maintain their function and capacity to prevent flooding, which could damage the roadway or adjacent properties, or cause a safety hazard. This includes channels and ditches that are within the ROW, drainage easements, rivers, streams, or other watercourses that are crossed by roadways via bridges or culverts.

Routine maintenance activities that are typically performed in these channels include the removal of sand, silt, sediment, debris, rubbish, woody and herbaceous vegetation and other obstructions to flow, the control of weeds, grasses, and emergent vegetation; and the repair and/or replacement, cleaning and clearing of facilities, all as necessary to maintain the structural integrity and capacity of these facilities for drainage, flood control, and conservation purposes.

This agreement is not intended to cover:

- 1) any activities, including routine maintenance, in any riparian habitat that supports sensitive or listed species,
- 2) activities that are not exempt from CEQA pursuant to either a Statutory or Categorical Exemption (Cal Code of Regulations, Title 14, Chapter 3, §15260-15285, 15300-15332), or
- 3) activities that would involve more than routine maintenance. Notification pursuant to Section 1600 et seq. will still be required for all activities that are not specifically authorized by this agreement.

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II. DEFINITIONS

The following definitions shall govern this agreement:

A. "Improved channel" is defined as the channel of a stream or river, watercourse or ditch, in which significant man-made alterations have occurred to improve the passage of water, irrigation, and/or flood flows, including straightening the channel or containing the flows within constructed banks that are concrete-lined or riprapped, or earth channels with modified banks.

B. "Unimproved channel" is defined as the channel of a stream or river, watercourse or ditch, in which significant manmade alterations and/or improvements have not occurred.

C. "Maintenance activities" is defined as the removal/displacement of sand, silt, sediment, debris, rubbish, woody or aquatic vegetation and other obstructions to flow; the control of weeds, grasses, and emergent vegetation; and the cleaning and clearing of erosion control facilities as authorized in this Agreement.

D. "Routine maintenance activities" is defined as recurring maintenance work (either scheduled or predictable) that is necessary to maintain the functional integrity of an existing facility. It does not include any activity that would result in a change to the design capacity or existing footprint of a facility.

III. ROUTINE MAINTENANCE ACTIVITIES AUTHORIZED BY THIS AGREEMENT

Caltrans may conduct the routine maintenance work identified in this section without the need to obtain any additional streambed alteration agreements from the Department, provided that Caltrans fully complies with the terms and conditions of this agreement.

A. Removal of Debris or Obstructions. Caltrans may clear facilities on stream channels of trash, rubbish, flood-deposited woody debris, fallen trees, and herbaceous vegetation which significantly reduce channel capacity, or which may impede storm flow.

B. Removal of Silt, Sand, or Sediment. Caltrans may clear facilities on stream channels of silt, sand, or sediment which reduces or obstructs flow. This includes the cleaning and reshaping of dry ditches. If a stream channel is altered during routine maintenance, the operator shall reconstruct a low flow channel through the altered stream reach. The low flow channel shall be properly aligned within the stream bed to avoid future bank erosion and shall feature neither a flat, wide or sluice-like channel bed. The re-constructed channel bed shall feature no sudden changes in slopes. This agreement does not authorize Caltrans to increase the existing design capacity of a facility.

C. Vegetation Control. Caltrans may control vegetation in a facility that restricts normal flow under or through it, except that Caltrans may not remove trees greater than four inches in diameter at breast height (hereinafter "dbh") without prior approval from the Department.

D. Minor Repair of Existing Facilities. Caltrans may make minor repairs to existing facilities in dry stream channels provided that bank stability is not degraded and any area where grading, filling or excavation occurs is stabilized to prevent the mobilization of sediment into the channel. All repair work shall be limited to the original specifications of the existing facility and shall be limited to the existing right-of-way. If a facility upgrade is needed which will result in increased capacity or changes to the bed, channel, bank or stream flow beyond the original project footprint, or requiring work outside the existing right-of-way, Caltrans shall use the

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standard section 1601 notification process before commencing work.

Except as otherwise permitted in this agreement, the removal of soil, vegetation, and vegetative debris from the streambed or stream banks is prohibited without prior notice to the Department pursuant to California Fish and Game Code Section 1601.

IV. TIME AND MANNER OF ROUTINE MAINTENANCE ACTIVITIES

Maintenance activities shall be performed at a time and in a manner to minimize adverse impacts and provide for the protection and continuance of existing fish and wildlife resources. The following measures to protect fish and wildlife resources are mandatory conditions of this agreement.

- A. All work within channels that have only intermittent flow shall be performed while the channel is dry. Work within channels with perennial flow shall be performed during times when there is relatively low flow.
- B. Caltrans shall not remove vegetation from March 1 to August 15 to avoid impacts to nesting birds. Vegetation may be removed during this time if a qualified biologist conducts a survey for nesting birds within one week of the vegetation removal, and ensures no nesting birds could be impacted by the activity. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.
- C. Caltrans shall ensure that maintenance activities conducted in dry desert washes shall be unoccupied of any state threatened, endangered, or special status species by a qualified biologist.
- D. Any exotic plant species removed shall be disposed of at a site approved by the Caltrans biologist. The Department recommends the removal of exotic plant species from as many channels and streams as possible as long as this can be accomplished in a manner that does not harm existing fish and wildlife resources.
- E. Caltrans shall not disturb vegetation on the stream banks during maintenance operations, except as needed to allow access of equipment and personnel to the area. These impacts shall be reduced to the greatest extent possible and shall in no case exceed the limits defined in this agreement.
- F. Material removed from the channels shall not exceed the limits approved by the Department.
- G. Material removed from the channels shall not be placed where it can be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.
- H. Water containing mud, silt or other pollutants from routine maintenance activities conducted by Caltrans shall not be allowed to enter a lake or flowing stream, or be placed in locations that maybe subjected to high stream flows or where it may be washed by rainfall or runoff into waters of the State. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation.
- I. No debris, soil, sand, bark, slash, sawdust, rubbish, cement or concrete washings

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thereof, asphalt, oil or petroleum products, or any other material that may be harmful to fish or wildlife, that results from any maintenance or associated activity of whatever nature that is conducted by Caltrans or their contractor(s), shall be allowed to enter or be placed where it may be washed by rainfall or runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

- J. Staging/storage areas for equipment and materials shall be located outside of the stream/lake.
- K. Caltrans shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Caltrans to ensure compliance.
- L. Any equipment or vehicles driven and/or operated within or adjacent to the channels, streams or lakes shall be checked and maintained daily, to prevent leaks of materials that if introduced into water could be deleterious to aquatic life.
- M. No equipment maintenance shall be performed within or near any stream, channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- N. Equipment shall not be operated in ponded or flowing areas. When work in a flowing stream is unavoidable, measures to minimize turbidity/siltation shall be implemented.
- O. If a stream's low flow channel, bed or banks/lake bed or banks have been altered, these shall be returned as nearly as possible to their original configuration and width, without creating future erosion problems.
- P. Caltrans shall provide a copy of this agreement to all contractors, subcontractors, and Caltrans' project supervisors. Copies of the agreement shall be readily available at work sites at all times during periods of active work and must be presented to any Department personnel, or personnel from another agency upon demand.
- Q. The Department reserves the right to enter the job site at any time to ensure compliance with the terms/conditions of this agreement.
- R. Nothing in this agreement authorizes Caltrans to trespass on any land or property, nor does it relieve Caltrans of responsibility for compliance with applicable federal or State law. This agreement does not constitute or imply the approval or endorsement of a project, or of specific project features by the Department of Fish and Game beyond the Department's limited scope of responsibility, established by California Fish and Game Code Sections 1600 et seq. The agreement does not, therefore, assure concurrence by the Department with the issuance of permits from this or any other agency. This includes, but is not limited to, CEQA and NEPA project review. Any fish and wildlife protection or mitigation features that are adopted by a CEQA or NEPA lead agency, or made the conditions for the issuance of a permit for this project, become part of the project description for the purpose of this agreement.
- S. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of Caltrans, and is not required by this

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agreement. It is further agreed all liability and/or incurred cost related to or arising out of the Caltrans' project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of Caltrans and/or its contractors. Caltrans agrees to hold harmless the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages, except for any claim or action resulting from the active negligence of the Department or its employees, agents or assigns.

- T. Caltrans may request a renewal of this agreement prior to its termination date. If Caltrans fails to request renewal prior to the agreement's termination, then Caltrans shall submit a new notification with fees and required information to the Department. This agreement shall be reviewed as necessary prior to any renewal to ensure environmental conditions have not changed, or that new provisions are not required to protect fish and wildlife, or to resolve conflict between the parties. Any activities conducted under an expired agreement are a violation of Fish and Game Code.

V. REPORTING REQUIREMENTS

Caltrans shall provide a written report, including a brief description of the activities conducted and a complete list of each location/facility where routine maintenance was performed during the previous year, (January 1 through December 31), to the Department on or before February 28 of each year. Caltrans shall include the associated fee total for all activities completed. The report shall reference this agreement by number and shall be sent to the Department at the address listed in **Section VII**.

Caltrans Maintenance will submit a log of maintenance activities, with pre-project photographs and description of work, to the District Biologist on a monthly basis. The District Biologist shall review these logs to ensure that all activities were conducted in accordance with the terms of the agreement. The log shall be retained by Caltrans for the duration of this agreement in a location that is accessible and known to the Department, and shall be available for review at any time during normal business hours.

VI. FEES

California Code of Regulations, Title 14, Section 699.5, establishes fees for projects subject to Fish and Game Code Section 1601. The category for 1601 ROUTINE MAINTENANCE ACTIVITIES by public agencies specifies an initial non-refundable application fee, with additional charges for each project, where a "project" is defined as work that falls within the agreed scope of maintenance work. Fees applicable to activities undertaken pursuant to this agreement will be those currently in effect at the time of the activity.

- A. **Initial Fee.** Caltrans shall submit an initial fee in the amount of \$154 before the Department executes this agreement. Caltrans shall submit the fee to the address listed in **Section VII**.
- B. **Notification Fee.** In addition to the initial fee, Caltrans shall submit with each notification a separate notification fee in accordance with the following fee schedule:
1. \$129.50 each for the first 20 maintenance projects;
 2. \$102.75 each for the second 20 maintenance projects; or

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3. \$78.25 each for maintenance project in excess of 40.
- C. Amendments. The fee to amend this agreement shall be 50% of the initial fee.
- D. Renewal Fee. The fee to renew (i.e., extend) this agreement shall be equal to the initial fee unless a new amount has been established by law or regulation at the time of renewal.
- E. Fee Schedule. The above fees are consistent with the fee schedule in section 699.5 of title 14 of the California Code of Regulations. In the event the Department amends the fee schedule in such a manner that the above fees are no longer consistent with the fee schedule, Caltrans shall thereafter pay the fees set forth in the fee schedule.
- F. Maximum Fees. California Fish and Game Code Section 1607(b) currently establishes fee limitations subject to legislative review as follows: "fees in an amount not less than fifty dollars (\$50) or more than two thousand four hundred dollars (\$2,400).

VII. SUBMITTALS

All fees and reports, notifications, documents, and any other written information Caltrans is required to submit to the Department under this agreement or pursuant to section 1601 shall be submitted to the following address:

California Department of Fish and Game
Eastern Sierra-Inland Deserts Region
Attn: Lake and Streambed Alteration Program
4775 Bird Farm Road
Chino Hills, California 91709

VII. AMENDMENT AND TERMINATION

This agreement cannot be amended or modified in any way except by a written agreement duly executed by the Department and Caltrans. Mutually approved amendments become part of this agreement are subject to all previously negotiated provisions unless said provisions have been expressly addressed in the amendment.

This agreement may be terminated by either party upon 30 days written notification to the other party. Upon termination, the activities of the parties shall be governed by the applicable provisions of California Fish and Game Code Section 1601.

The Department reserves the right to suspend or cancel this Agreement, after giving notice to the Operator, if the Department determines that the Operator has breached any of the terms or conditions of this Agreement, or for other reasons, including but not limited to the following:

- a. The Department determines that the information provided by Caltrans in support of the Notification/Agreement is incomplete or inaccurate;
- b. The Department obtains new information that was not known to it in preparing the terms and conditions of the Agreement;

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c. The project or project activities as described in the Notification/Agreement have changed; or the conditions affecting fish and wildlife resources change or the Department determines that project activities will result in a substantial adverse effect on the environment

VIII. ENTIRE AGREEMENT

This is the entire agreement and understanding between the Department and Caltrans for routine maintenance activities, and supersedes all prior and contemporaneous routine maintenance activity agreements, representations, or understandings, if any, whether oral or written.

This agreement shall become effective beginning on the date of the Department's signature and receipt of the application fee, and shall terminate 2 years after that date.

IX. OTHER ENVIRONMENTAL LAWS, STATUTES, AND REGULATIONS

This agreement does not constitute any form of authorization, permit, biological opinion, or compliance with the requirements and provisions of any other statute, regulation, requirement, or ordinance respecting the protection or conservation of fish and wildlife resources. Those statutes include, but are not limited to, the California Environmental Quality Act, the California Endangered Species Act and the Federal Endangered Species Act.

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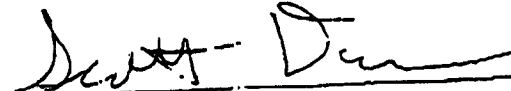
CONCURRENCE

In WITNESS WHEREOF, the parties below have executed this Lake or Streambed Alteration Agreement as indicated below:



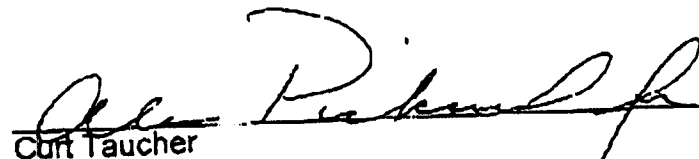
4/22/03
Date

Mr. Nathaniel Pickett
Biological Studies and Permits Branch, Chief
California Department of Transportation - District 8



7/22/03
Date

Prepared By:
Scott Dawson
Staff Environmental Scientist
Department of Fish and Game - Region 6



7/22/03
Date

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